Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

No. 85-5319

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

WILLIAM JASPER DARDEN,

Petitioner,

v.

LOUIE L. WAINWRIGHT, Secretary,
Florida Department of Corrections,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL JOINT APPENDIX

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UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

Excerpts Of Trial Proceedings On Habeas Corpus.

* * * *

[272] MR. PROSPECT: I do not foresee one, no, sir.

I will go on record, no, I will not recall them.

THE COURT: Well, it will be the ruling of the Court that you will not be permitted to do so. Under those circumstances, do you want them to remain in the courtroom?

MR. PROSPECT: If they wish to.

THE COURT: All right, they may do so.

MR. PROSPECT: Thank you.

THE COURT: Would you administer the oath, please.

Thereupon:

RAYMOND A. GOODWILL, JR., a witness on behalf of Respondent, having been first duly sworn, was examined and testified as follows:

THE CLERK: Repeat your name for the record, please.

THE WITNESS: Raymond A. Goodwill, Jr.

DIRECT EXAMINATION

BY MR. PROSPECT:

Q. Mr. Goodwill, will you please state your occupation and your address.

A. I am an attorney at law. I practice at 107-A Avenue Northwest, Winter Haven, Florida.

[273] Q. For how long have you practiced law, sir?

A. I was admitted to the Bar in 1965.

Q. What was your occupation in that regard in the fall of 1973?

A. At that time I was employed part time as an Assistant Public Defender for the Tenth Judicial Circuit.

A. Who was your boss?

A. Jack Johnson.

Q. How many hours would you say you devoted between your part-time duties to the Public Defender's office and, I assume, to your private office?

A. Yes, sir.

Q. Could you give us a breakdown, approximately, of your hours devoted prior to the Darden trial?

A. I was assigned to be in Bartow at least two days a week and, of course, the amount of time I would spend would vary depending on the case load at any particular time.

It was a very strong caseload, especially for those of us that were trying—actually trying cases, so it would vary depending on what types of cases were coming up. The time spent in Bartow was two days a week, basically, unless a trial carried over or something of this sort.

[274] Q. When you say assigned to Bartow, did that involve everything from the initial stages of a criminal trial through the conclusion?

A. Not necessarily. Some cases—I primarily tried cases during that period of time.

Q. I see.

A. And would not be involved, as a general rule, with the initial contact with the client at the office.

Q. When did you first come in contact with Mr. Darden?

A. Late in the fall of 1973.

Q. Can you give me an idea of at what stage the case was from the Public Defender's standpoint—was in stage of development?

A. May I refer to some notes of the file that I have that—

Q. Would you please identify the notes—the source of the notes?

A. The notes I'm referring to now are notes that I made from the court file in Bartow, in going through the various documents that were contained in that actual court file.

Q. You mean, in the public records?

A. In the public records. And I jotted down notes from that rather than get a copy of the progress docket [275] or something of this sort.

Q. Have you had occasion to examine the court file or copies of the—not court file, I'm sorry—but the Public Defender's file that was provided Mr. Johnson last Friday?

A. I have previously reviewed what was in—what was given to us as the trial file. It was not complete. But the documents that were contained therein, I did have a chance to look at, yes.

Q. In what respect, sir, was it not complete? Can you think of any specific examples?

A. Well, there are numerous things—may I refer to some of the things in the file?

Q. Absolutely, yes.

A. This is the trial file that was given to us, which I first saw yesterday.

I have a Xerox copy of a list of documents from PD file re: Willie J. Darden, CF 73-2027C, signed by Mr. Darden. Noted, received the above documents this 31st day of December of 1973.

There is listed—there are certain things listed. One is a summary of an interview Jim Hill had with Bill Barnes. Jim Hill was the investigator hired by the Public Defender's office. That is not contained in the file.

[276] The statement of Ms. Macie Wright, No. 3 on the list—that is not contained in the file.

4, Statement of Ms. Christine Bass—that is not in the file.

The statement of Thomas Joseph Diggins, which is No. 10, is not contained.

Those specifically are the things that I recall were in the file at the time we were preparing for trial, that are not in there now.

Of course, it's been five; six years since the time I last saw this file, and I don't have any way of knowing if there are other things not contained in there or not. Specifically, these things are not contained in there.

Q. Were those statements made as a result of an investigation made by Mr. James Hill?

A. Yes, sir.

Q. Mr. James Hill was the investigator for the Public Defender's office?

A. Yes, sir.

Q. Had you had experience with him prior to the Darden trial?

[277] A. Some limited experience, yes. He had investigated other cases in the office for us.

Let me retrack for just one second. It's hard for me to tell from these things whether or not the statement—unless it says statement of interview with Mr. Hill—whether or not it was a statement made to Mr. Hill. It may very well have been a statement which was made to an investigator, either from the Sheriff's Department or from the State Attorney's office, we had access to.

Q. I see.

A. So I can't tell, for example, whether or not these were Mr. Hill's statements or the other, although I feel that they were Mr. Hill's.

Q. All right, sir. When in the fall of 1973 you were assigned to Mr. Darden's case, who made the assignment, sir?

A. Mr. Johnson.

Q. At that point in time you had approximately—you were admitted in '65—eight years of legal experience in practicing law.

A. Yes, sir.

Q. Had you had any legal experience prior to that?

A. Yes, sir.

[278] Any capital cases prior to that?

A. Yes, sir.

Q. What would you describe as the percentage of criminal cases to all other cases that you practiced for those eight years?

A. Well, at that time I had been with the Public Defender's office, if I'm not mistaken, about three to three and a half years, and there's no way that I can even guess how many cases I handled during that period of time.

I know that practically every Tuesday or Wednesday that I would have anywhere from five to eight cases which were ready to go to trial at that time.

Q. Would it be fair to say that your practice in criminal law from the defense standpoint was extensive?

A. Yes, sir, I think that would be a fair statement.

Q. How many capital cases had you handled prior to Darden?

A. I believe in one year prior to the Public Defender's office, either being established or handling capital cases—in

other words, when the Circuit Court was appointing attorneys to represent indigents in capital cases, I believe in one year I had thirteen or [279] fourteen assigned me.

Q. Capital cases?

A. Capital cases.

Q. As you began the investigation into the facts surrounding the charges against Mr. Darden, what did you find? In other words, what was the evidence that you had become aware of and by whatever means?

A. From what point?

Q. From the initial point forward, or at least until I stop you.

A. Well, of course, we had some contents in our file at the point in which I became involved—you asked me about when that was, and all I can tell you is that I noticed that the first document which was filed by me was filed on November 1st of 1973—of course, I had the contents of that file.

We also had availability to the State Attorney's files—a reciprocity type agreement that we had with the State. In other words, there was not a necessity to file a formal discovery motion in order to receive information from the State Attorney. It was a carte blanche situation as far as almost going in and looking at their file at any time we wished.

Of course, I learned the basic facts of the crime, itself. I observed that Mr. Darden had made a [280] statement initially to Mr. Hill shortly after arrest. Sometime subsequent to that he made another statement, I believe, to Mr. Johnson—I'm not sure—where it varied somewhat with the earlier statement that he had made.

As I recall, I interviewed Mr. Darden and briefly recapped the statements and got his side of the story.

Q. Well, before we get to that, what did you find that the State had against him?

A. At the point that I became involved the State basically had two witnesses who had identified him.

Q. Did they have any physical evidence in terms of fingerprints? Ballistics?

A. No, sir.

Q. Nothing in that regard?

A. No, sir, absolutely not; never did.

Q. Now, getting back to your discussions with Mr. Darden. How was he as a client?

A. I never felt that I had any problems with Mr. Darden. I thought he was as open as he could be under the circumstances with me.

I tried to lay out the things to him—the facts, what our procedures would be. Many times after we would talk and I would not think there would be any [281] problem, we would then be met with motions which were filed by him.

Q. Did you find him to be new in the criminal justice system?

A. No, sir. He had had, apparently, a fairly long history of being involved in the system.

Q. Did you find he had perhaps a familiarity or grasp on what you were telling him in terms of procedure in the law?

A. I wondered where he obtained all of his legal knowledge from.

Q. All right, sir.

A. Because some of the motions that were filed, apparently—well, what we refer to as "jailhouse motions," and I assume in fact—I think he even told me he learned some law from some disbarred lawyers, something of this sort, down at Avon Park.

Q. Did Dennis Maloney assist you in any of your personal preparation on this case and, if so, beginning at what time?

A. The case was—it's hard to identify the involvement of any one particular person up to a point—up to the point of actually going to trial. The case was assigned to the Public Defender and as so, many times that—we did prior to that time—the [282] Public Defender's office handled the case, and many people had input.

We would discuss various things with other members of the staff. If there were good, viable ideas that came out of the discussions, we would pursue them. So it really was a team-work type thing up to a point, and I'm sure even before I became intimately involved with the case, I had a certain amount of input or had been included in discussions to that point, regarding the case.

Q. Do you know whether Mr. Maloney, as a member of the staff, had any input prior to your involvement?

A. Oh, I feel certain that he did.

Q. All right. When you came on the case, was Mr. Maloney assigned to you in any capacity?

A. No, sir.

Q. Did he have any function in the case in relation to you?

A. As I recall, Mr. Maloney was not actually assigned to help me on the case until—it may have been after we were reappointed to represent Mr. Darden, which would have been January 9th, or subsequent thereto.

Q. And what did this help consist of? In other words, what was he supposed to do to help you?

A. Generally, assist me in trial. As I recall, [283] I went to Mr. Johnson and told him that it was an extremely complicated case, that there was a lot of witnesses to worry with, that we had a lot of legal points to raise, and that I would feel that it

would be most helpful if I had somebody to assist me generally in the trial.

The one specific thing I recall asking him to do was prepare the research on the issue of the identification, the Arnold boy identification involving photograph identification after the Public Defender's office was appointed to represent Mr. Darden, which we felt was improper.

As far as specific, that is the only specific thing that I can recall I asked him to do, other than generally assist me at trial.

Q. Was it your contention that he conduct any phase of the trial before the jury?

A. Yes, sir.

Q. It was an agreed upon intention, or was it just your intention?

A. It was my intention and I understood that Mr. Maloney understood it.

Q. That he would participate before the jury.

A. Yes, sir.

Q. To a limited degree or greater or less?

[284] He would participate insofar as witnesses that were not—I don't know how to characterize them—not the primary witnesses, not the most incriminating witnesses—witnesses which were, say supplemental.

Q. All right, sir. In response to the evidence you found the State had against your client, what did Mr. Darden tell you with regard to a proposed defense?

A. Well, the defense, of course, was that he was innocent.

Q. Absolutely.

A. And that he was not there, and that he did not do it.

Q. What did he tell you in that regard, with specificity?

A. He laid out a fairly lengthy series of events which occurred that day, from the standpoint of trying to establish an alibi for his whereabouts.

As a result of that discussion or several discussions that I had with him over that, I filed a motion with the court to allow Mr. Darden to be released from jail, under certain security measures, to go with me to retrace his steps on that day, because he was very vague about where certain things were because he was not familiar with the surrounding—

Q. Was he permitted to do that?

[285] Yes, sir.

Q. This was a capital defendant?

A. Yes, sir.

Q. To your knowledge or in your experience, had that ever happened before?

A. No, sir, and I wasn't sure the court would grant the motion when I filed it.

Q. But, nevertheless, it was granted.

A. Yes, sir.

Q. Describe the conditions of this trip and its purpose.

A. The purpose was to allow Mr. Darden to retrace or to take me to certain places where he said he had been that day—the day in question—with the view toward trying to obtain witnesses which would be helpful to place him in those various locations on that day.

The conditions were that it would be done under proper security, there was a Polk County Deputy Sheriff, as I recall which drove—it was a station wagon—Polk County Deputy Sheriffs drove the vehicle.

I know that Mr. Darden—I don't know, I take that back. It was my recollection that Mr. Hill was present on that trip.

Q. Which Mr. Hill?

A. Jim Hill.

[286] Q. The investigator?

A. Right.

And the statement that I alluded to a minute ago that Darden made during the trip, I don't recall whether there is a tape recording made of his comments, by Mr. Hill at that time, or whether Mr. Hill made notes. It's my recollection that there was a tape recording made of the trip, but I could be in error.

Q. Prior to the trip and prior to your moving to take the trip, had Mr. Darden told you or had your investigation revealed Christine Bass?

A. I don't know exactly when we became aware of Christine Bass—whether it was before or after.

Q. Do you recall how you became aware of her?

A. No, sir, I don't.

Q. Could it have been from Mr. Darden?

A. It could have been from Mr. Darden. It may have been from a response to discovery that we filed, that was provided by the State.

Q. Did you ever talk to the lady, personally?

A. No, sir.

Q. Did you ever read a statement of hers?

A. Yes, sir.

Q. Can you remember what the statement said?

A. In very general terms; that a black male had [287] had car trouble in front of her house; that his car was apparently blocking the road; that they pushed it off the road somewhere near her house; that she went out to assist or see if she could assist. There was some discussions about calling a wrecker.

As I recall, some neighbors of hers, some real estate people that were neighbors of hers, the Lawhorns, apparently came out to try to help this individual. That ultimately the car was fixed, and the individual left.

Q. Do you recall any time?

A. Again, without having her statement that was in our file, I don't recall except the fact that, to the best of my recollection, it placed it somewhere between 5:00 and 5:30 on the day in question.

Q. All right. What did your investigation reveal in terms of the time the crime was committed and the time Mr. Darden was involved in the automobile accident? In that regard, I hand you Petitioner's Exhibit No. 12, 14, 15, 16 and 17, and ask you if that will assist you.

A. Sequentially, it's difficult for me to reconstruct when this information became available to me. I was aware, based on the report that was filed with the Sheriff's Department of Polk County, that the call [288] regarding the murder came in at 6:31; 1831 hours, and that Sgt. Don Neal was the first unit to respond, arriving at 1834 hours or 6:34.

I also took a deposition of Mrs. Edith Hill and I note that you have—I don't know where this statement came from—this exhibit.

Q. What number, sir?

A. 16.

Q. I believe that's been identified as a statement from Investigator Jim Hill, taken on October 23rd, '73, at 5:30 p.m.

A. I don't remember seeing this in our file yesterday when I looked at it.

We had a statement from Mr. Hill, also. I followed it up with a deposition of Mrs. Hill, who indicated that she heard shots and that all of this occurred around 6:30 in the afternoon.

I also had a copy or saw a copy of an accident report which was either a Florida Highway Patrol accident report or a Hillsborough County Sheriff's Department accident report, which indicated that the accident occurred at 6:35 p.m.

Q. Did you have any information which you could utilize to place Mr. Darden anywhere between 5:30 p.m. and 6:35 p.m.?

[289] A. No, sir.

Q. Did he give you any?

A. No, sir.

Q. Was that the purpose of the in-custody trip?

A. Yes, sir.

Q. What was the result of that in-custody trip?

A. Excuse me. That, and to retrace his steps prior to that point.

Q. Thank you.

A. There was discussion about a muffler being fixed and things of this sort that had happened prior to the actual breakdown of the car.

Q. Did the trip substantiate the breakdown of the car?

A. The trip was rather vague. It was not exact as to places, times, locations. "Is this the place?" "Well, I'm not sure. Let's go over there." We'd go over to another place. "No, that's not where it was, either."

It was one of those series of things. I think we did identify, or he did identify for our purposes, a Gulf station where he had gone, or where he said he had gone to get a muffler fixed. As a result of that, Mr. Hill talked to the employees—I think Mr. Darden indicated to me that there was a young boy [290] working there and that he had fixed the muffler—as a result of that, Mr. Hill interviewed the young man that was working

there and the young man said that no one had come in with muffler trouble on that day.

Q. Was it before or after that trip that Mr. Darden told you he wished to present the defense of alibi?

A. You mean formal defense?

Q. Not necessarily formal, anything. Anything in that line.

A. Well, alibi had been the defense.

Q. From the beginning?

A. From the beginning, from the initial statement given to Mr. Hill.

Q. As a result of your entire investigation, including the trip, interviews, reading of statements, whatever, what was your professional assessment of the possible success of an alibi defense?

A. I personally drove the distance from Ms. Bass's house to the scene of the crime at a normal rate of speed, at approximately the same time of day, on the same day of the week; and it was possible to get from one place to another for the things to have occurred.

It was my feeling that to present an alibi defense with a gap in which the critical period was [291] left unanswered, would have been—it would have done more harm than good.

Q. Did you have any reason to believe that Ms. Bass was being anything but truthful when she stated that she had seen Mr. Darden in front of her house at approximately 5:30, 5:35?

A. I had no reason to doubt Ms. Bass's truthfulness at any time.

Q. So he could have left her house at that time, still have committed the offense, and have been involved in the accident at 6:35?

A. That is what the evidence showed.

In addition to that, we had—excuse me a moment.

(Witness reviews his file)

What I'm looking for is something in our file. I can't seem to locate it. I saw it this morning.

We contacted the Silver City Garage. Mr. Hill—James Hill—contacted the Silver City Garage, who indicated that a wrecker had been dispatched to a DAV vehicle at 5:40 at that location.

Q. Excuse me. What is a DAV?

A. Disabled vehicle.

Q. Thank you.

A. At 5:40, and the description or location where [292] it was dispatched to was approximately the same.

Q. I'm handing the witness Petitioner's Exhibit No. 26.

A. Yes, sir. This is what I was referring to. That a wrecker was dispatched to Lakeland Hills Boulevard and Joker Marchant Stadium, at 5:40, and that the car was 1022, which means that it was canceled because the car was gone, at 5:40.

As I recall, Christine Bass could testify to the last time she saw him, but could not get specific about what time it was he left there; although, as I recall, the Lawhorns were much more specific about what time he left.

We followed up on this because there was some question about a call being made to the wrecker company to come and tow him off.

To backtrack just a little bit, also on the alibi—we contacted two officers of the Lakeland Police Department who were sent out to the scene because two cars were blocking an intersection at Lakeland Hills Boulevard and Marchant Stadium. This was information that Mr. Darden had given us, that two Lakeland police officers had come out to the scene.

Q. Did he have any names for you?

A. No, sir, I don't think he did, and I don't [293] seem to recall exactly where he got them from; perhaps called the Lakeland Police Department, had them check their log for that day.

Anyway, they arrived at 4:39 p.m., they left the scene at 4:43 p.m. This was fine, because it was prior to the time but it didn't assist us in the critical period.

The Hillsborough County Sheriff's Office was also contacted by Mr. Hill—by James Hill—at my request. They indicated to him that they received a telephone call at 1832 hours, 9-8-73—this would be 6:32, from a person calling from the area of the Lakeland Lounge advising them of an auto accident on the new Tampa Highway.

Q. So because of the gap from 5:30, 5:35 until 6:32 or 6:35, I believe you testified that it was your judgment, ill-advised, to present or even think about presenting any alibi defense; is that correct?

A. Yes, sir. If we had presented that alibi defense, the State would have come with rebuttal on the alibi that I think would have been devastating.

Q. How do you know that?

A. Subsequent to the trial, Mr. McDaniel told me that he was just hoping that I would put on the alibi.

[294] Q. Why is that?

A. Because he had also retraced his steps, knew what the distance was and was prepared to put testimony on as to how long it would take from one place to another, and that would or could still place Mr. Darden at the scene of the crime.

Q. So it turns out that you made a good judgment in light of that.

A. Not according to Mr. Harper.

Q. I show you Exhibit 1—Petitioner's Exhibit 1—and ask you if you remember receiving that from Mr. Darden?

A. Yes, sir.

Q. Would you read the last paragraph, the written paragraph, after the list of witnesses, out loud, please?

A. "Mr. Goodwill, I would like to talk to you right away. Thanks. If you think that there are some of these witnesses that you would not want, please feel to choose on your own whether or not they will be helpful, or you also may have the privilege to add or to take away from this list. Thanks. Willie J. Darden."

Q. Is that a list beginning with Ms. Macie Wright and ending with Mr. Charlie Tyus?

A. No, sir, this list actually ends with Mr. [295] Jim Hill?

Q. Is Mr. Charlie Tyus before Mr. Jim Hill?

A. Yes, sir.

Q. All right, sir. Do you recall when, or does that reveal when you received that?

A. It's not dated.

Q. Would it be safe to assume that it was received prior to trial?

A. Yes, sir.

Q. In light of this statement?

A. Yes, sir.

Q. Would you read the statement that I just pointed to?

A. "Please subpoena the below listed witnesses for trial on January 15, 1974, witnesses for trial in Citrus County."

So it had to be given to me subsequent to December 27th, 1973, because that, I believe, was the date the change of venue motion was granted.

Q. I show you Petitioner's Exhibit No. 2 previously identified as a notice of intention to claim alibi, dated January 10th, 1974, and signed by Mr. Dennis Maloney. Were you aware that that was filed?

A. Yes, sir.

Q. Did you agree that it should be filed?

[296] A. Yes, sir. I'm sure that I did. It wouldn't have been filed if I hadn't.

Q. Well, could you explain to me then, in light of your testimony to the effect you thought a defense of alibi would be useless or ill advised, why did you file it? Or why did you agree to its filing?

A. We had been recipients, as well as the Court, of numerous motions filed by Mr. Darden, himself. We had gone through numerous hearings where first he wanted us off the case, and then he didn't want us off the case, and I think that my feeling at that point was that we were going to go ahead and subpoena these people in order to cover ourselves if he ever comes back and says, "Well, I wanted these people subpoenaed for trial, and he refused to do it."

So we went ahead and subpoenaed them. Although let me say that I was already aware that John D. Stone, Lee Michael Stone—and all the Stones—were State witnesses. Mary Simmons was a State witness. Several of these on here had already been subpoenaed by the State.

Q. When was the decision not to present an alibi defense made?

A. When was it ultimately made?

Q. Yes, sir.

[297] At the close of the State's case.

Q. By whom was it made?

A. By Mr. Darden and by myself.

Q. Would you elaborate on that, please, sir—how it came about?

A. Well, at the close of the State's case Mr. Maloney and myself went into an anteroom, which was being used as a holding cell—I guess you would call it—immediately outside of the courtroom, where Mr. Darden was being held during the recesses, et cetera.

I recall that there were two guards at the door. Mr. Maloney and I were frisked before we went in as far as ballpoint pens, keys and things of this sort. And at that time we had a very lengthy discussion with Mr. Darden regarding this alibi situation.

I told him very directly that I thought that the worst thing we could do was to put on a poor alibi. At that point we had the tail-end of the alibi, the tail-end being Mr. Stone, the man involved in the accident or that observed the accident that Mr. Darden had, which was fairly well agreed upon that he was there at that point and he had admitted all along that he was in the accident—that was not an issue—and Mary Simmons, who had taken him to Tampa.

Again, I told him that I did not think that [298] we should put on an alibi, that we would lose closing argument, for one thing.

Q. How was that, sir?

A. Well, if you put on anybody other than the defendant, you're going to lose your right to close to the jury.

Q. Is that under Florida Rules of Criminal Procedure?

A. Yes, sir.

Q. Thank you. Continue.

A. There was somewhat lengthy conversation about it. I believe I told him that I felt the best thing to do was to go ahead and let him take the stand and let him fill in the front part of the alibi.

Q. What would be the front part?

A. Well, up to the accident—the automobile accident.

Q. After Bass, before Stone.

A. Well, actually the whole day.

Q. All right.

A. He testified as to what his activities had been through the entire day.

Feeling that this probably—that this part of it would probably not be rebutted, and then we had the back end of the alibi going with the State witnesses. [299] So we could use the State's witnesses to prove part of our alibi, Mr. Darden could testify to the front part of it and we would still retain closing argument.

Q. When you say "retain closing argument," don't you mean the number of closing arguments?

A. Right. Well, the right to make the last closing to the jury.

Q. The last words the jury heard.

A. Right.

Q. By not putting on any other witnesses other than Mr. Darden, you secured that right.

A. Yes, sir.

Q. And, in fact, exercised it.

A. Yes, sir.

Q. Okay. What was Mr. Darden's response to your advice and statement?

A. He agreed with them.

Q. He agreed?

A. He agreed.

Q. He agreed that no alibi witnesses should be presented?

A. Yes, sir, after we went through what we had, he agreed that what we were discussing was the best thing to do.

Q. And that the strategy would be best to let [300] him take it in his own words?

A. Yes, sir.

Q. Do you recall receiving from Mr. Darden what has been identified as Petitioner's Exhibit No. 9, a list of questions from him which he desired you to ask him?

A. I have a recollection of receiving this, but specifically no, I don't recall it; but it's very possible that I did.

Q. Do you possibly recall whether you read the questions?

A. If they were given to me, I read them.

Q. There are certain notations in the left-hand margin, consisting of question marks, stars, X's and other marks or other notations. Do you know of your own recollection whether you made those?

A. The question marks aren't mine. The X's look like they could be.

Q. Would you have any idea what the X's mean?

A. I think it would be pure speculation.

Q. All right. Is is possible that the X's meant in your opinion these questions should not be asked?

A. It is possible.

MR. HARPER: Your Honor, if it please, on those I object. On those I have gone just as far as I [301] can. The witness hasn't even been able to, first, identify them. He indicated he recalls one question. He recalls seeing the document. That in fact he asked the question did he make the marks. It's just been pure speculation up until now. For him to speculate, but yet admit something that he doesn't know whether he or Mr.

Maloney put them on there, is just about as far as I can go without objecting. I object to it as being pure speculation on the part of the witness.

THE COURT: What's your response, counsel?

MR. PROSPECT: Nothing.

THE COURT: Sustained.

BY MR. PROSPECT:

Q. Mr. Goodwill, if I could back you up now, did Mr. Darden ever ask you to arrange for a lineup or to take a polygraph examination?

A. No, sir.

Q. Did you ever approach Mr. Darden with the suggestion that he plead guilty in return for a life sentence?

A. It's possible.

Q. Do you know whether the State or the prosecution, that is—first, let me ask you this. Did the State ever approach you and say they were willing to deal?

[302] A. No, sir.

Q. Did you have any indication or reason to believe that they might be willing to deal?

A. No, sir. Quite the opposite.

Q. Then your suggestion, perhaps, that Mr. Darden plead was based on, what?

A. How do you mean, what?

Q. Well, could it be the possibility that you could get a deal worked out?

A. Well, if the individual is not going to go along with the deal, there's no use in going and getting the deal to begin with. My indication from the State was that they would have never dealt.

Q. Did you refuse to take depositions of witnesses?

A. No, sir.

Q. Did you refuse or fail to interview witnesses?

A. Which witnesses?

Q. Any witnesses.

A. Requested by Mr. Darden?

Q. Yes, sir.

A. It's possible.

Q. Would there be a reason for your refusal?

A. Well, number one, I'm not saying that I did.

Q. I realize that.

[303] A. It's possible, and the reason for it would be that, in a murder case, there has to be somebody to control the conduct of the trial and the preparation for the trial. The reason I say that it's possible that I may have refused it, is because it may have been something right off the wall, had no relevancy.

If it was relevant, I did not refuse.

Q. Did there ever come a point in time during the entire representation that you afforded Mr. Darden that you were forced to, more or less, sit him down and tell him that you were in charge and that you were conducting the defense in the manner you saw fit and if he didn't like it, he could move to dismiss you—or words to that effect?

A. I don't recall ever saying that to him.

Q. Did you ever tell him that you were the one that was going to conduct the defense in this case, and he had no business doing so?

A. Not that I recall.

Q. In your experience, have you ever had a defendant that required your telling that?

A. In so many words?

Q. Or very generally to that effect. In other words, establish who's the boss.

A. I think you're taking an isolated situation.

[304] I was not trying the case as co-counsel with Mr. Darden. However, he had treated the situation as if I were co-counsel, as if the entire Public Defender's office were co-counsel, by filing his own motions.

We requested that he stop doing this. If he had things that he wanted filed, please let us know and we would file them in proper form.

Yes, sir, in the middle of a trial or something like that when you're being interrupted, when you're trying to listen to testimony from the stand and he's interrupting you, it's possible I may have turned to him and told him to shut up and I'll run the defense.

Q. Was Mr. Darden denied the opportunity to participate in any aspect of his defense?

A. Mr. Darden sat at counsel table, and, as I recall, every decision of any major import was discussed with him. Why things were being done, why things weren't being done, procedures that were being followed, et cetera.

Q. Did you ever tell him that he should plead guilty because he was in Polk County, Florida, and that he had killed a white person, and that under those circumstances it was not a situation in which he should [305] be?

A. Did I ever tell him that he should plead guilty—

Q. Because—

A. —because he killed a white person? No, sir.

Q. How would you describe your attitude toward Mr. Darden—overall?

A. Perhaps at times, aggravated. But, generally, I truthfully don't feel that I had any problems with him.

Q. Did you ever tell Mr. Darden that he couldn't expect the Public Defender or the Public Defender's office or you to investigate every little detail that he gave you?

A. It's possible.

Q. Did you ever fail to answer any inquiries that he made of you?

A. Not that I recall.

A. When the change of venue was granted, were you on the case—I'm sorry, let's back up.

When the motion for change of venue was filed, were you representing Mr. Darden?

A. Yes, sir.

Q. When it was granted, were you representing [306] Mr. Darden?

A. I can't say for sure. It was simultaneous with us being dismissed.

If I'm not mistaken, hearing for change of venue and the motion waiving counsel—the second motion that he filed waiving counsel—was at the same time. Now, I may be incorrect on that.

Q. After you were reappointed to the case, did you object to the venue having been changed and did you seek to get it returned?

A. Yes, sir. We also objected to the venue being changed, to begin with.

Q. Why was that?

A. To Mr. Darden.

Q. What was that? Whose idea was it?

A. To do what?

Q. To change venue.

A. Mr. Darden's.

Q. Why did you object?

A. I felt that we ought to at least try to see whether or not we could get a venire in Polk County to try the case, rather than to move it to God knows where.

The logistics of the situation. The fact that we were talking about location, roads, towns, that were [307] in Polk County. It may be important to be here where people were familiar with some of those places that we were talking about. I believe the suggestion was made to Mr. Darden by the Judge on a prior request for change of venue, that the proper thing to do would be to keep venue in Polk County and see if a jury couldn't be sworn and then try—if it could not be because of prejudice, then to go ahead and move for the change of venue. That was our position.

Q. Who conducted voir dire examination?

A. I believe both Mr. Maloney and I did.

Q. Was there a time when Mr. Maloney conducted it by himself? Or at least certain aspects of it?

A. How do you mean?

Q. I mean—

A. Without me present?

Q. No, not without you present. You said you both did. I mean, did he have—what, a certain number of people to examine? Or did you have other matters to take care of?

A. I don't recall. The record would show that.

A. Were you present?

A. Yes, sir.

Q. Did you listen to the questions that Mr. Maloney asked of the prospective jurors?

[308] Yes, sir.

Q. Were you satisfied that he was doing a job that should have been done?

A. Yes, sir.

Q. Did he ever inquire, after at least temporarily relinquishing a witness, whether he should ask further questions? In other words, did he miss anything.

A. You mean, did he come back to counsel table?

Q. And ask you if he missed anything?

A. I'm sure he did.

Q. And did you give him guidance?

A. If he came back, yes, sir. I'm sure he did, that's standard procedure.

Q. Did you ever direct Mr. Maloney to draw out the voir dire examination for an entire day because you hadn't had the opportunity to prepare an opening statement?

A. That's absolutely rediculous.

Q. Did you ever tell him to draw it out for the entire day?

A. I may have.

Q. For what reasons?

A. I knew that the State's first witness was going to be Mrs. Turman. And I certainly didn't want the jury going home the first day after being [309] picked and put in the box and listening to the devastating testimony that she was going to produce, and have all night to sit there and think about it, all by itself, isolated.

Q. Mr. Goodwill, did you even make an opening statement?

A. No, sir.

Q. Why not?

A. I never make an opening statement.

Q. Why is that?

A. My own personal belief is that it doesn't accomplish anything prior to the State's case. Quite frankly, I use the opening statement to argue to the jury one more time.

Q. At what point in trial?

A. Primarily before the defense puts on their case.

Q. Did Mr. Maloney cross examine any State witnesses?

A. Yes, sir.

Q. Were you present?

A. Yes, sir.

Q. You heard all questions asked?

A. Yes, sir.

Q. Once again, did he do a job good enough, in [310] your judgment?

A. Yes, sir. He did an admirable job.

Q. What kind of witnesses was he directed, permitted or asked to cross examine?

A. I believe he cross examined Edith Hill.

Q. Who was she?

A. She was a neighbor lady to the Turmans who heard the shots and saw the young boy run toward her house after he had been shot and observed the car leaving the furniture store.

Q. Did she identify Mr. Darden?

A. No.

Q. Who was another witness?

A. We also had the deposition of Mrs. Hill and a statement from her, in addition to the deposition.

Q. I'll get to that.

A. I would have to refer to the—I believe—to the petition that was filed, or the amended petition.

Q. John Daniel Stone?

A. John Daniel Stone was the man who was involved in the automobile accident with Mr. Darden, or was there at the time Mr. Darden had the accident. We had his statements. We knew exactly what his testimony was going to be. Mr. Stone was our witness.

Q. Mary Simmons.

[311] A. Mary Simmons was the lady who transported Mr. Darden back to Tampa after the accident. Again, she basically ended up being our witness.

Q. Sammy Taylor.

A. Sammy Taylor was a deputy sheriff. Particularly, I don't recall what he testified to, except he was the one who took some photographs of the scene. He may have taken some photographs of the scene of the murder and also the scene of the accident.

But, basically, all he did was identify pictures that were of the scene at the time.

Q. Eugene Mezger.

A. Eugene Mezger was the pathologist from Lakeland General Hospital. We had his pathologist report. The sum and substance of his testimony was the cause of death.

Q. You knew what all of the above witnesses were going to testify to.

A. Yes, sir.

Q. How did it come about that Mr. Maloney cross examined them?

A. Each individual one, I can't tell you specifically. There was some discussion between Mr. Maloney and I in the trial. I'm sure, when the State would call a witness I would lean over to him and say [312] something to the effect, "You go ahead and take the cross examination on this one," or whatever.

You know, we didn't lay out and say, "Okay, I'll do this one, this one, this one, and this one. And you do this one, this one, this one and this one."

Q. Did you ever spring it on him?

A. No, sir.

Q. How would you classify these witnesses in terms of ability to incriminate your client?

A. Non-probative. The only one that could possibly incriminate the client would be John Stone. John Stone, as I say, was kind of a toss-up situation where we had—we used him to show that the accident did occur as Mr. Darden said that it did.

Q. I realize that it's perhaps difficult, but can you give me an approximate number of hours you spent on this case from beginning to end?

A. Number of hours—I don't think it's even possible. I know that I spent more time on this case than I spent on—with some fear that I may be here on another one of these hearings, but I spent more time on this case than I spent on any capital case I have been involved in, probably more time than any case I've ever been involved in.

Q. How would you consider your level of interest [313] in this case?

A. My level of interest was extremely high because I was cognizant of the possibility of the result.

Q. Were you ever lackadaisical to the case or your conduct at trial?

A. I don't believe you can be lackadaisical in a capital case, a murder case.

Q. Do you recall if Mr. Darden ever had to ask you to object?

A. Again, I'm sure he's like many of the defendants that I represented before—like when something comes in, you know, he pokes you, "Object, object, object." Again, either he's going to run the trial or I am. And I'm not saying that he did, but he may have.

Q. Did you ever ignore him?

A. How do you mean "ignore him?"

Q. I don't know. Let's see what we can invent. Did you ever ignore him at trial or in preparation for trial?

A. I don't know what "ignore" means. I'm sorry.

Q. All right. We'll let it go at that.

It has been alleged that Mr. Darden smelled alcohol on your breath, and according to his testimony, twice. He did say that—that is at trial—he did say that he smelled it on many occasions before trial, [314] "during normal working hours." That however, you were not drunk, but only mildly intoxicated. Is that statement, in your opinion, true, sir?

A. No, sir. That's a lie.

Q. Did you ever drink any alcoholic beverages during the actual trial of this case? In other words, were you under the influence of any alcoholic beverages during court appearances?

A. No, sir.

Q. Did you ever drink after trial?

A. Yes, sir.

Q. Do you recall the day that, because of your absence, trial was continued for a day?

A. Yes, sir.

Q. Would it be your recollection of the facts that, prior to that day, the State had already received testimony from Mrs. Turman and from other witnesses who, as a matter of fact, I believe everybody but Weatherford and Phillip Arnold. Is that square with your recollection, roughly?

A. Yes, sir.

Q. To that point the best the State had done was offer eyewitness testimony from Mrs. Turman that Mr. Darden had committed the crime. They had presented testimony that a car was seen leaving the area at the [315] time, that a car was involved in an accident, and that Mr. Darden had been identified as being present at that accident. They had, I believe, introduced a weapon. Had that weapon ever been ballistically tied to your client?

A. I don't recall that the weapon, itself, had been introduced into evidence.

Q. At that point?

A. No, sir.

Q. All right.

A. Testimony regarding the weapon from the FBI ballistics expert had been put on the stand.

Q. All right. Let me ask you this, perhaps to be more accurate. Did your investigation indicate that the weapon could be ballistically matched to any of the bullets recovered?

A. No, sir. We had the FBI reports in our file both as to ballistics, blood tests, fingerprints—everything that the FBI checked, we had.

Q. Did your investigation reveal that the State had any fingerprint evidence that they could use?

A. No, sir, they did not.

Q. Of any kind.

A. None at all.

Q. From the store.

[316] A. The only fingerprint evidence that they had was that there was one fingerprint on the steering wheel on the vehicle and one, I believe, on a pair of glasses which were found in the vehicle, the wrecked vehicle.

Q. Whose prints were they?

A. Mr. Darden's.

Q. That didn't bother you: did it?

A. No.

Q. All right.

We admitted that he was in the car.

Q. I show you Petitioner's Exhibit No. 19, a report from the Sheriff's Office of Polk County, Florida, signed by Dan Weatherford.

Had you ever seen that prior to trial?

A. Yes, sir.

Q. Do you have an idea, approximately, how far in advance of trial that you saw that?

A. Almost immediately after I became involved.

Q. Almost from immediately after.

A. This diagram haunted me from the time I started.

Q. In what way? How does that report—if you would, please, describe it for the Court for purposes of the record. What does that diagram represent?

[317] A. You want me to show this to Judge Game, or—

Q. No, sir, I believe a verbal description will do.

A. All right. What this portrays is the placement of the cartridges in the cylinder of the gun, which was found approximately thirty feet from the automobile that Mr. Darden wrecked, at the time that Deputy Sheriff Weatherford picked it up and opened the cylinder.

The testimony later revealed that he was most careful in opening the cylinder as to not disturb the rotation of the cartridges contained therein.

Being somewhat familiar with guns, I knew that this gun had a left rotation. In other words, when you pulled the trigger, you had a left rotation of the cylinder.

The testimony derived from Mrs. Turman and Phillip Arnold, as to sequence, was as follows:

She testified that the first shot killed her husband. Phillip Arnold then came on the scene, looked up, and the gun was in his face, the trigger was pulled, and there was a click. The trigger was pulled again and he was shot in the mouth. The trigger was pulled again, as he was rising, and he was shot in the back of the neck, and then as he was running, he was shot the third time, in the back, and that's all of [318] the testimony regarding the shots fired.

Mr. McDaniel later vividly showed in Court, it was a bang, click, bang, bang, bang.

What this diagram shows is that there was a fired cartridge in this location. (Indicating)

Q. Use the hands of the clock if you would.

A. All right. Okay. There was a fired cartridge in the four o'clock position. There was an empty chamber in the six o'clock position. There was a fired cartridge in the eight o'clock position. There was a fired cartridge in the ten o'clock position. A fired cartridge under the firing pin. And a live round in the two o'clock position for the last bullet.

Q. What did this mean to you?

A. I meant that circumstantially that the gun which was found in the immediate vicinity of Mr. Darden's car, while not being able to be linked ballistically or through fingerprints, could be linked on the basis of the cylinder sequence.

Q. Prior to or during trial, had you had any either formal or informal discussions with Mr. McDaniel or Mr. White, the prosecutors?

A. In reference to what?

Q. The case.

A. To this case?

[319] Q. Yes, sir.

A. Oh, I'm sure we did, yes.

Q. From those discussions, did you get any idea that that particular piece of evidence, which you stated earlier haunted you—whether they intended to use that? I mean, did you know for a fact that it was coming in?

A. No, sir. There was never the first indication that they knew about it, and if they didn't, I wasn't going to tell them. This was hidden back—I say hidden, it was down in their file along with a bunch of other reports. It had not been pulled to the surface, there wasn't anything out of the ordinary that had been pulled, and as I say, I certainly wasn't going to tell them about it if they hadn't picked up the seriousness of that piece of evidence.

Q. Did there come a point in trial that you decided that it was necessary to learn whether they were going to use it?

A. I told Mr. Maloney from the time we arrived in Inverness, that it was absolutely imperative that we know it.

Q. What did you do, if anything, to determine whether they were going to use it—and I'm referring to the night before the continuance?

[320] A. Okay. After the trial, after we got back to Iverness, I went to the bar in the hotel where we were staying.

Q. Where were you staying, by the way?

A. I can't remember the name of it.

Q. What city? Was it Iverness?

A. No, sir, it was in Homasassa Springs.

Q. Homosassa Springs?

A. Yes, sir—Homosassa, I don't think it was Springs.

And quite frankly I began to pump Dan Weatherford.

Q. Who is Dan Weatherford?

A. The investigator that had drawn that diagram.

Q. And what do you mean, "began to pump him?"

A. I made up my mind that I was going to find out whether they knew about that cylinder or not, because if they did, if they were going to use it, I felt like we had some very serious problems as far as a conviction was concerned.

If they did not come in with that, it was my impression that we at least had a horse race on the basis of identification of a very distraught woman and a boy who had been shot three times.

And basically, we had nothing except that [321] I could complain a whole lot about the Sheriff's Department not taking fingerprints or ballistic tests or paraffin tests or tire tracks or innumerable things, I probably definitely had a horse race. If that was coming in, I'm not sure what I was going to do, but I knew we had to do something.

Q. All right, sir. Please continue.

A. I proceeded through the evening to find out from them, in fact, that they did know about it, that they were aware of it,

and certain bullets were painted red and others yellow. It was going to be a very graphic demonstration for the jury.

Q. You determined that they knew about it and that they were going to use it.

A. Yes, sir. Yes, sir.

Q. And you determined this in the course of what period of time and under what conditions?

A. Oh, I would say from probably 8:30, 9:00 o'clock until midnight.

Q. Did you have supper?

A. I had supper prior to that.

Q. How many people were you with?

A. As I recall, there was Weatherford, possibly Herbert Goodson, who is a deputy sheriff. There may have been another deputy sheriff there, I don't recall [322] exactly who was there.

I was primarily concerned with Weatherford and no one else. This was a big bar, you know, with people coming in and out.

Q. Motel bar?

A. Yes.

Q. In Homosassa, Florida?

A. Yes.

Q. Is that a large town, by the way?

A. Not that I saw.

Q. Would you consider it small?

A. Yes, sir.

Q. Okay. What happened after you discovered what you didn't want to discover?

A. To the best of my recollection, I went to the room somewhere between 12:00 and 12:30, somewhere in that neigh-

borhood. Mr. Maloney was already in bed asleep, as was his practice the whole time we were there.

I believe I awakened him and told him they were aware of the gun. I had tried to emphasize upon him for three days the devastating chain which I felt this could create, apparently without success.

I told him that they knew about the gun, and we had to come up with something, and could he help me go through the file or something. I was really at [323] somewhat of a loss as to exactly which direction to go then, but I wanted some help.

Q. What was his response?

A. He was asleep and he wasn't going to help me.

Q. And what happened then—did he go back to sleep? What did you do?

A. I proceeded to go through the file.

Q. For how long?

A. Two, three hours, maybe.

Q. Did you go to sleep that night?

A. Yes, sir, as I recall it, I fell asleep there on the table where I had the file spread out.

Q. How many drinks had you had?

A. Several. Five, four, five, six maybe.

Q. Had you ever had that many before in your life?

A. Yes, sir.

Q. Do several drinks make you highly intoxicated?

A. Not highly intoxicated; I'm sure that I was somewhat intoxicated. I will not deny that. It's hard to describe in a situation out of context, when you're sitting there with some deputy sheriffs who have one design in mind—

Q. Which is—

A. To convict your client. I mean, you can't just [324] sit there and sort of crawl over in the corner and say, "No, I'm not going to drink, boys. Tell me about the gun."

I mean you kind of have to get into the swing of things with them and be among them.

Q. One of the boys?

A. Sure.

Q. All right. You fell asleep at the table after two or three hours, until—what time would that put you, approximately, asleep?

A. I can't tell you exactly.

Q. What happened the next morning?

A. I was awakened by Mr. Maloney leaving the room, the door slamming to the room.

Q. Did he awaken you?

A. No, sir.

Q. Or did the door awaken you?

A. The door woke me.

Q. What time was this, approximately? Do you remember?

A. I believe it was about eight o'clock.

Q. What did you do then?

A. I got up and got dressed. I had a severe headache. I don't acquaint it with the alcohol intake. I'm prone to migraine headaches. I took some medicine [325] for that, and laid down and waited until nine o'clock.

I had pretty well formulated in my mind that the primary thing we had to do, as far as a defense move at that point in time, was to get the psychiatric evaluation by a private psychiatrist, which we had been trying to get for some long period of time.

Q. We'll get back to that in a minute. Did you at some time finally go to court?

A. Yes, sir. I called Mr. Maloney prior to court starting and told him that I had some things to do. I knew that Dr. Mezger was the first witness—to go ahead and take Dr. Mezger, and that I would be there as soon as possible. But I did not feel well, I had taken some medicine, and I would be there.

I went to Inverness. One of the bailiffs or deputies, I can't recall, indicated when I got there they had just recessed and they had just walked out of the courtroom when I got there.

Q. For the day?

A. Yes, for the continuance that day.

Q. Okay.

A. I turned around and went back to Inverness—this would have been probably eleven o'clock by the time I got back over there, I guess—I went to see Judge Dewell.

[326] Q. What about?

A. I knew that he would want to see me.

Q. Why did you think that?

A. I think it had been indicated to me that he wanted to talk to me. He apparently had it conveyed to him by one of the deputies that had been present the night before, that I had been out with them and pumping them for information.

Q. What did the Judge have to say to you?

A. He chewed me out for what he thought was possibly unethical conduct, told me he was not going to have any error in his trial if he could prevent it, and that to avoid any possibility of error, that he went ahead and continued the case for the day.

He was aware that I had been there, that I had just returned from Inverness. Prior to the time that I went to Inverness I

talked to the psychiatrist's office in Tampa, in order to see if we could get Mr. Darden in to see him that day.

As I say, when I went to Inverness that day, it was for the full intentions of arranging for that psychiatric examination.

Q. You mean you had intended to do that all along irrespective of what transpired the night before?

A. Well, you see, he was supposed to have been [327] examined prior to trial, a couple days prior to trial.

Now, back up a little bit on the psychiatric—almost immediately after I was put on the case, I wanted an independent psychiatric and psychological examination done on Mr. Darden, not by the doctors at the Polk County Hospital, but by private physicians and psychologists.

My initial efforts in that were thwarted by Mr. Darden, because he said the defense is not sanity—"I'm innocent, I don't want a mental evaluation."

It was brought up again at another hearing sometime around November—I believe it was November 7, the record indicates it, the transcript shows it—that I again was after a psychiatric examination.

At that time it was explained to Mr. Darden, in court, that the psychiatric and psychological could be used for something other than an insanity defense—sentencing, possibly in defense, whatever.

My understanding from reading the transcript is that he pretty much went along with that being done. But there was no definite date set as to when that would be done.

The chain of events came along December—it was the end of December—we were dismissed from the [328] case, we got back on it six days before trial. The psychiatric and psychological evaluation still had not been done.

I went to Judge Dewell and said, "I want it done," and he said, "Okay, arrange it."

It was arranged for, I believe, the Saturday before trial was to start, or the Monday before, but immediately before trial.

Through a mixup with the deputy sheriffs he was not delivered to the right place, or the doctors were at one place and he was somewhere else; otherwise, it was not done. I was very concerned about getting this done, and after the testimony became apparent to me—about the gun—it became more of an impetus to me to have it done.

So when I went to Inverness that morning, it was with the distinct idea that, "Judge, we need to have this thing done. You have to go ahead and continue trial"—I didn't know it had been continued at that point—and told Judge Dewell that I had already contacted the office with the idea of trying to get it done.

Q. Did Judge Dewell—to use your words—chew you out about drinking?

A. No sir.

[329] Q. What about pumping a witness?

A. He chewed me out about pumping the witness and being late and causing the continuance, but not about the other, no sir.

Q. Do you recall coming into your motel at four a.m.?

A. No, sir.

Q. Do you recall having some sort of an argument or fight with Mr. Maloney?

A. Well, that's subject to some definition. I think that I was not too happy when I came in and asked him for some help and I didn't get it, but that was somewhat a familiar pattern.

Q. If Judge Maloney had testified that it was four a.m., would he be mistaken?

A. Yes, sir.

Q. At that time do you know of any place in Homosassa, Florida, that you could have stayed out until 3:30; 4:00 a.m.?

A. No, sir.

Q. This is a weekday, as best you recall?

A. It was a Wednesday night.

Q. In your experience in handling capital cases, during voir dire examination of the jury, do you much care whether you find it out if the juror is irrevocably [330] committed against capital punishment?

A. Do I care?

Q. Do you care if you're the one that finds out?

A. No.

Q. Who generally finds that or establishes that?

A. That the individually is opposed?

Q. Violently opposed.

A. Violently opposed to capital punishment?

Q. Enough to excuse him for cause under Witherspoon.

A. Why would I excuse a man who's opposed to capital punishment?

Q. Thank you.

All right. After you agreed—the three of you—Mr. Maloney, yourself and Mr. Darden—that the only defense that would be presented would be the testimony of the defendant, himself, and that was concluded, do you recall the closing argument?

A. Yes, sir.

Q. Now, because of your tactics, you had last closing argument; is that right?

A. Yes, sir.

Q. Is it correct that Mr. Maloney had the very first closing argument—

A. Yes, sir.

[331] Q. —that was presented.

A. Yes, sir.

Q. When did he know that he was going to have closing argument?

A. I can't tell you exactly.

Q. Spur of the moment?

A. No, sir.

Q. At least sometime in advance?

A. If I'm not mistaken, I think we discussed the fact that he would take the opening phase of closing the day before.

Q. The day before.

A. Uh-huh (indicating affirmative).

Q. What was the opening day or the first half of the closing argument to consist of, generally? Do you remember, or did you establish it?

A. The whole closing argument was predicated on one thing—that was lack of evidence.

Q. Okay. Now, do you recall that the next person to present closing argument was one Mr. White?

A. Yes, sir.

Q. Do you recall who Mr. White was—other than a prosecutor? Was he to Mr. McDaniel as Mr. Maloney was to you?

A. Yes, sir.

[332] Q. An interne?

A. Mr. Maloney was not an interne.

Q. Not at that time, but perhaps was Mr. White on equal footing?

A. He had been practicing a short time. He certainly wasn't as experienced as Mr. McDaniel, no, sir.

Q. All right. Then, after Mr. White presented his argument—under the rules that you've described today—Mr. McDaniel has a shot at the jury; is that not correct?

A. Yes, sir.

Q. Do you recall what is now Mr. McDaniel's infamous closing argument?

A. Yes, sir.

Q. Did you know Mr. McDaniel prior to trial?

A. Yes, sir.

Q. How long and under what circumstances?

A. I had gone to law school with Mr. McDaniel.

Q. Where was that?

A. University of Florida.

Q. Had you maintained contact with him after law school?

A. Yes, sir.

Q. Are you both from the same area?

[333] A. Yes. Not originally, but after law school he practiced in Lake Alfred and I was in Winter Haven.

Q. So you knew him for at least the eight years prior to trial and the three years of law school.

Q. Yes, sir.

Q. Did you know him fairly well?

A. Yes, sir.

Q. Remembering that part of his argument—any part of his argument—where he began what I have admitted many times to many courts, an unnecessary tirade, do you recall Mr. Maloney doing anything which may have led you to believe that he was about to object to the argument?

A. Yes, sir.

Q. Can you possibly remember the statement which perhaps caused him to want to object?

A. No, sir. It was very early in the argument. It was very early in Mr. McDaniel's argument.

Q. How did you know that Mr. Maloney was about to object?

A. It was one of those things where he looked and said nothing to me, but he rose up out of his chair halfway. I reached over and pulled him down.

Q. Why?

A. Because I didn't want him to object.

[334] Q. Why?

A. Because I wanted to let Mr. McDaniel go on.

Q. Why?

A. Because I felt he would get much more vehement in his remarks if you allowed him to go on, and we could always come back in with an objection later on in order to preserve it for the appeal purposes.

Q. In other words, because of your knowledge of Mr. McDaniel on a personal relationship, it was your decision to let him go?

A. It was my decision to stop Mr. Maloney from objecting to it.

Q. Why?

A. For just what I—

Q. If he had objected, what do you think would have happened?

A. The same thing that happened when he did ultimately object.—The argument ended.

Q. Exactly.

A. If you will look at the record, you will note that at the time Mr. Maloney finally made his objection, after that point which was—there was not a sustaining to the motion, Mr. McDaniel did not continue his tirade past that point.

Q. Why did you let Mr. Maloney object when he [335] finally did?

A. Preserved it for the record.

Q. Then you felt it was time?

A. Yes, sir.

Q. Why would you want to preserve the record?

A. Number one, you start a capital case from the idea of two approaches. Number one, is to certainly preserve error for appeal. Secondly, is also to win it then and there if you can. I think it became apparent when some of the testimony came in that there was a fairly great amount of testimony which was incriminating.

If we caught a verdict in our favor, it would not have matter what his argument was. If we did not get a verdict, then I think that the argument, had it gone further than it did, it probably would have been reversible error without objection, and certainly with objection. I think this was borne out somewhat by the Florida Supreme Court. At least two of the Justices believed that it was reversible.

Q. When you say "reversible," does that mean that your client gets a new trial?

A. Yes, sir.

Q. Is that something, if all else fails, something to be looked forward to from a defense standpoint?

[336] A. I don't know of a defense lawyer that—delay seems to be almost every defense lawyer's middle name.

Q. I don't work that side of the street, but could you explain why?

A. I think most of them feel that if you can keep delaying and delaying and delaying, that the passage of time certainly helps the situation.

Q. Witness memory?

A. Witnesses memories get vague, witnesses die, things may happen, in between that may have some bearing.

Q. Mr. Maloney, Judge Maloney, testified that in his professional opinion the defense of Willie Jasper Darden was shocking and one of the poorest run trials he has ever seen. What is your opinion of Mr.—let's back up a bit—what is your opinion of Number One, the quality and the extent of the State's case and the defense you were able to come up with and the degree of effectiveness of representation, in that order?

Q. The strength of the State's case?

Q. Yes, sir.

A. Extremely strong. Extremely strong if you could link it with the evidence I indicated.

Q. But they had no fingerprint evidence.

A. No.

[337] Q. And nobody really put him at the scene of the crime.

A. But you had two i.d.'s.

A. With the—well, you mean with the exception of those?

Q. No, I'm sorry. Those people who you earlier described; one, the distraught lady.

A. Right.

Q. And the other, the boy who had been shot three times.

A. Right. But you do have two i.d.'s placing him at the scene.

Q. All right. But eliminate those and you have no other physical evidence with the exception of the gun; circumstantially.

A. An accident three miles away.

Q. Was the case fully investigated and developed by the Public Defender's office?

A. As far as I'm concerned, it was, yes, sir.

Q. Can you think of anything you failed to do?

A. No, sir.

Q. Is there something today you would do differently?

A. Based on the rules that we had to go by at that [338] time—particularly talking about the mitigation situation on sentencing—I don't know of anything that I would do any differently than I did.

Q. I assume that you're referring to today existing petitional law is that the trial court may receive all relevant evidence in mitigation, regardless of the fact that they may not be listed in the statutes; is that correct?

A. Yes, sir.

Q. Either today or then, could you think of any relevant evidence that you could have presented on behalf of Mr. Darden, in mitigation?

A. No, sir.

Are you aware that the court found two elements in mitigation?

A. No, sir.

Q. It might refresh your memory that even though it wasn't presented and you could think of none, apparently the trial court felt it was relevant the fact that he was the father of seven and that he had repeatedly professed his innocence.

A. Well, okay. Yes, if you're talking about mitigations per statute.

Q. Yes, sir, or anything in mitigation.

A. Oh, okay. I thought you were referring to [339] two mitigating factors per statute.

Q. No, sir.

A. Yes, that was mentioned.

Q. With or without—

A. That was mentioned, but that's not statutory.

Q. Right. Exactly. Can you think of any relavant evidence, non-statutory, that you could have presented then, or even today that you can think of, you could have presented?

Q. No, sir.

Q. Can you give me any idea why you think Judge Maloney would make the statement he's made under oath to the effect that the preparation was atrocious?

A. You've placed me in somewhat of a difficult position. I indicated to Mr. Harper sometime back that I felt that Mr. Maloney had done a superb job in those portions of that trial that he was asked to do.

The only thing I know of that would temper it would be an almost moralistic view on his part being in opposition to capital punishment.

MR. PROSPECT: Thank you, Mr. Goodwill. Your Honor, I have no further questions at this time.

THE COURT: All right. At this time we will take a recess. We'll come back at three [340] o'clock.)

(Recess, 1:55 p.m. to 3:00 o'clock p.m.)

MR. HARPER: May it please the Court--

THE COURT: You may inquire.

CROSS EXAMINATION

BY MR. HARPER:

Q. Mr. Goodwill, at the point of Mr. Darden's trial, how many capital cases had you actually tried?

A. I believe three or four had actually gone to trial.

Q. Okay. The comment you made about the file which you had from the Public Defender's office—about the things missing—did you make a copy of the file before you sent the original off?

A. I can't answer that. I don't know. It was sent off by the office.

Q. You didn't cause a copy of it to be made?

A. Not personally, no, sir.

Q. Do you know the actual day that you first appeared on behalf of Willie Darden?

A. You mean a court hearing?

Q. Well, actually either in the way of a court appearance or causing a pleading to be filed on his behalf, or whatever point you were formally assigned to the case.

[341] A. Well, there wasn't any formal assignment, you know, in the form of a memo or anything like that that I would have.

I believe that it was October 31st, 1973, that I filed anything on his behalf. We filed motions to compel, motion in order to allow defendant to retrace steps, and I took three depositions on that date. That's what the court file indicates was the first activity as far as court filing is concerned.

Q. You're referring to some notes there—your notes you took from the court file?

A. Yes, sir.

Q. When did you take those notes?

A. I guess two weeks ago.

Q. Okay. And you used the notes to refresh your memory at this point? May I look at those?

A. Sure. What I did was just begin at Volume I of the court file and just make notes of pertinent dates that certain things were done.

Q. Thank you. Okay, the first thing you filed, Mr. Goodwill, you indicated was a motion to compel. What was that?

A. I believe this motion was filed as a result of a prior response for discovery in which I alleged that there was certain other information that I felt [342] that the State had knowledge of.

Q. Would this be in the way of a motion to compel further discovery?

A. Well, yes. This was in the nature of a motion to compel the State to turn over to me, specifically the name and address of the lady who took the defendant to Tampa, the names and addresses of the witnesses to the automobile accident and the photos used for the out-of-court i.d. by Ms. Turman and Mr. Arnold, if any.

Q. So these were pretty strick discovery procedures utilized then; is that right?

Q. Yes, sir, I think it was.

Q. Okay. This was sort of contravening this blanket discovery and routine discovery that was normally practiced in that circuit; is that right?

A. Yes, sir.

Q. Okay. A person in custody would have a hard time availing themselves to this informal routine of discovery utilized between the State's Attorney's office and the Public Defender's office; would they not?

A. Yes, sir.

Q. Virtually impossible.

A. It would be under normal circumstances. However, I believe that our file indicates that he was [343]—that Mr. Darden was given copies of everything in our file which contained things that we obtained from the State Attorney's file.

Q. In that sense you were a conduit. If he did not have such a conduit he would—or any person in his shoes would not have access to that information; is that right?

A. No, I presume that would be correct.

Q. Okay. And you at one point in direct examination you indicated the case to be extremely complicated and indicated something to that effect around the time of reappointment on January 9th, 1974; do you recall that?

A. That the case would be complicated?

Q. Yes.

A. Yes.

Q. Okay. And it was in fact your fair appraisal that the case was complicated?

A. Yes, sir. I think that would be fair.

Q. At any point after your reappointment on January 9, 1974, did you file a motion to continue the case?

A. I don't recall whether a motion to continue was filed. I do know that at that point we filed a motion to change venue back to Polk County.

[344] Excuse me for just a second. I'll try to refresh my recollection from here.

No, sir, unless it was incorporated in some of the language for the motion for change of venue, we did not file a separate motion for continuance.

Q. Okay. Now, the case, at least at that point, was not complete with the psychiatric exam which you had been seeking for some time; is that correct?

A. Yes, sir, that's correct.

Q. Did you bring that matter to the court's attention, pretrial?

A. Yes, sir.

Q. I what way?

A. I believe I brought it to him, to Judge Dewell, in an informal fashion by going to him in his office or his chambers and making him aware of the fact that the psychiatric examination which I had been requesting for some time had not been done.

Of course, we did have a lapse of time in there when Mr. Darden was representing himself. And based on my oral communication with Judge Dewell, he entered an order on the 10th of January to deliver the defendant for psychiatric examination.

Q. Okay. Was that an ex parte hearing?

A. I believe not only ex parte from the standpoint [345] that Mr. Darden may not have been present, but it was also ex parte from the standpoint that the State probably was not even present.

Q. That was that I was referring to, even more than Mr. Darden.

And through some problem with the deputy sheriffs that court ordered evaluation did not take place; is that correct?

A. Yes, sir.

Q. And it was not until the third day of the trial that you called that to the Judge's attention?

A. No, sir, the Judge was aware that it had not taken place.

Q. Did you move to continue the case prior to trial so that the psychiatric evaluation could be completed?

A. No, sir, I did not.

Q. Mr. Goodwill, I deliver to you what is respectfully Exhibits 1 through 23 on behalf of the petitioner, and ask you to momentarily familiarize yourself with those.

(Witness examines documents(

A. All right.

Q. Are those documents familiar to you?

A. Pardon?

[346] Q. Have you ever seen those before?—Before right now?

A. Yes, sir.

Q. Are they familiar to you as either discovery or work product of the Public Defender's file in the case of State vs. Darden?

A. Yes, sir, all that—all but one which is Petitioner's Exhibit No. 21.

Q. What is No. 21? Do you recognize it?

A. It's my impression that it's notes made by someone in Mr. Gardner's office, who handled the appeal. It may have been

the result of a conversation he had with me subsequent to the trial, relative to the appeal.

Q. Do you recall the Sheriff's Office exhibits, specifically—13, 14, 15, 17, 18 and 20, as referring to the call regarding the Turman homicide received at 1831 hours, 6:31 p.m., on the right of 8 September 1973?

A. Yes, sir.

Q. And that call, according to these reports—do you recall that being initiated by Mrs. Turman herself?

A. I cannot say that for a fact, that that was by Mrs. Turman. I had a conversation with Mr. Koehler of the Sheriff's Department, who received the call—in [347] trying to verify the time and things of all this sort, and honestly, I don't recall whether he told me it was Ms. Turman or if it was the operator that had placed the call.

Q. Okay. Do you recall Ms. Turman saying that she initiated the call, either through the operator or directly herself, while the assailant was chasing Phillip Arnold?

A. I recall that shortly after Phillip Arnold left the premises that she placed the call; first, to the Sheriff's Department and then to her pastor and then her sister.

Q. Okay. So when you say, "when Phillip Arnold left the premises, "you're talking about the immediate vicinity of the store?

A. Yes, sir.

Q. And he may have still been in the general area, but he wasn't right around the store when she initiated the call.

Q. He was no longer at the back door, and neither was the assailant at that point in the store.

Q. Okay. And you indicated that this exhibit 12, Sheriff's Report or Highway Patrol Report—whichever it is—the acci-

dent report, that's what it's referred to, showed that the accident was at 6:35 p.m.; is that [348] correct?

A. Yes, sir.

Q. And what was the citation on the second page of that document—what was the offenses cited in the accident report?

A. Willful and wanton reckless driving—I believe it says leaving the scene.

Q. So one would infer that at least by 6:35 p.m. Mr. Darden had departed the scene of the accident, from that accident report; is that correct?

A. No, sir.

Q. Okay.

A. And you asked what time the accident occurred, and that indicates 6:35 and it indicates the trooper arrived shortly after seven, and that Mr. Darden was gone at that time.

Q. Okay. I've gotten ahead of myself. I show you Petitioner's Exhibit 24. Do you recognize the handwriting and the signature?

A. I don't recognize the handwriting, but it's signed J. Hill and, I assume, is Jim Hill of our office.

Q. Okay. And the second notation is about what—the second entry there?

A. The second entry is a result of a contact Mr. Hill had with the Hillsborough County Sheriff's Office [349] that they had received at 1832 hours on 9-8-73 from a person named Glen calling from the area of the Lakeland Lounge advising them of an auto accident on the New Tampa Highway.

Q. Okay. "They" being the Hillsborough County Sheriff's Office?

A. Yes, sir.

Q. Who from the Hillsborough County Sheriff's Office received that call?

A. I can't tell you. I assume that was information obtained from the radio.

Q. Okay.

A. Communications office.

Q. Okay. Did you investigate and find out who received that call in the Hillsborough County Sheriff's Office?

A. No, sir, not other than our investigator's report on it.

Q. Okay. Did you ever find out who Glen was?

A. They didn't know Glen. It was from somebody named Glen.

Q. Okay. Did you go to the Lakeland Lounge and investigate and find out who Glen was—there?

A. Did I, personally? No, sir.

Q. Okay. Did anybody under your supervision?

[350] A. Not to my knowledge.

Q. Okay. And that could be something that could be done in the case; isn't that correct, Mr. Goodwill?

A. Certainly.

Q. Do you know if Glen was a white man or a black man?

A. No, sir.

Q. But it's obvious that he reported an accident at 6:32 one minute after the—or at least an accident had been reported one minute after Mrs. Turman's call had been received; is that correct?

A. Yes, sir.

Q. And you indicated in your testimony—excuse me—

I show you Petitioner's Exhibit No. 19, which you testified to at length. What's on that diagram, Mr. Goodwill?

A. What's on here?

Q. Yes. In other words, you testified—go ahead.

A. The page is divided in half. The top appears to be-well, it's entitled "Location of 38 caliber Smith and Wesson Revolver, Serial No. so-and-so," was found—appears to be the diagram of a road, Highway 92.

[351] Q. What's the bottom half?

A. The diagram of the cylinder sequence.

Q. You testified at length on direct about Exhibit No. 19 when, in fact, it's actually two parts to the exhibit. You testified only to the gun sequence, but the top part has a map of some sort or diagram of similar import; is that correct?

A. It has a map on it.

Q. And that map indicates a distance from the scene of the crime to the scene of the accident; does it not?

A. I believe it does.

Q. Okay. Handing you Exhibit 19, I ask you does the top half of the diagram in fact depict a distance from the scene of the crime to the scene of the accident?

A. Yes, sir.

Q. And what is that distance?

A. Well, it's three miles and two-tenths of a mile from the Turmans to the Hillsborough County-Polk County Line, and it's two-tenths of a mile from the county line to the Lakeland Cocktail Lounge. But as to specifics, it doesn't show the distance to the accident, itself, it shows it to the Lounge. It would be approximately across the street from the Lakeland Lounge.

[352] Q. So this Exhibit No. 19 from the Public Defender's file would indicate that it's approximately three and four-tenths

miles from the scene of the crime to the scene of the automobile accident; is that correct?

A. Yes, sir.

Q. And these time sequences that have been reported to the respective sheriff's offices, the Hillsborough County Sheriff's Office and Polk County Sheriff's Office, would be but a minute's difference; is that correct?

A. Yes, sir.

Q. Is it not then entirely possible and probable that at the time of the assault on Mr. Turman and Mrs. Turman and Mr. Arnold, that Mr. Darden was in fact in an automobile accident that was in progress?

A. I believe that the—the time sequence is very close, yes.

Q. Okay. Now—

A. If I might look at the deposition of Ms. Turman, I believe that's where the problem lies as far as the time is concerned. Because she was not exactly definite as exactly when she called the police. It was sometime subsequent to the assailant leaving. She could not pinpoint exactly how much time, but it was not a long time.

[353] Q. Go ahead and review what you would like to review.

A. Our file—we don't have the deposition of Ms. Turman in our file. Mr. Johnson may have it or the Attorney General may have it, but we don't have it in the file which was given to us.

Q. I show you what has been respectively marked as Petitioner's Exhibits 18 and 19, Mr. Goodwill. All right. Referring to each of those, can you tell when Ms. Turman indicated she either initiated or caused to be initiated a call to the Sheriff's Office of Polk County?

A. This indicates that Ms. Turman got up off the floor and saw Phillip running to the south down the driveway. The col-

ored subject ran after Phillip. Ms. Turman at this time left the rear door area to go to the phone and call for help, this being the telephone operator.

Q. Okay. So she would have actually called the operator, and apparently immediately, while something was still going on, apparently; is that correct?

A. All I can tell you is what this report says.

Q. Okay. What report are you referring to?

A. Petitioner's Exhibit No. 18.

Q. Okay. Refer to 19, please. [354] (Witness examines document)

A. Yes, sir. What about it?

Q. Do you have any reference there to when the call was made?

A. Yes, there is.

Q. What does it say?

A. Well, the question is asked, "How many shots were fired; do you know?"

"Answer. One at my husband, two at Phillip at the back door, and I don't know how many after they left here, because I came back inside, dialed the operator, gave my address and told them there was a shooting and a holdup and for her to please call the Sheriff's Office."

Q. Of your investigation, do you know how many shots were subsequently fired?

A. Subsequently, to the two she's talking about?

Q. Right.

A. One.

Q. Okay. Then you indicated on direct examination that it was not possible to investigate every detail, or at least you told

Mr. Darden that it was not possible to investigate every detail. Is that because of the extreme complexity of this case?

A. Did I testify that it was not possible to [355] investigate every detail, or everything he wanted us to investigate?

Q. Well, I have it in my notes that you indicated that you didn't investigate every detail. My question is, is that because of limitations on your time and budget by virtue of the complications of the case?

A. No, sir. I think what I would have meant by that is that it was not possible to investigate every detail that he wished us to investigate, whether it was relevant or not relevant.

Q. Okay. Now, on the day you missed the trial, Mr. Maloney undertook the examination of Dr. Megzer.

A. Yes, sir.

Q. Is that the way you pronounce it?

A. Mezger.

Q. Mezger. You were not present, of course, when that started; is that correct?

A. That is correct.

Q. As a matter of fact, you were not present during the entire examination of Dr. Mezger.

A. No, sir, I was not. And I did err on direct in that respect.

Q. Okay. This was, then, Mr. Maloney's first capital case; is that correct?

A. Yes, sir.

[356] Q. And the doctor was in fact testifying to an essential element of the crime, namely, the criminal cause of death; is that correct?

A. Yes, sir.

Q. And in fact—have you reviewed the record of Mr. Maloney's examination of Dr. Mezger?

A. No, sir, I have not seen the record.

Q. Okay. By that you mean you haven't read the record.

A. I have not seen the record.

Q. You mean the transcript of the trial proceedings.

A. Correct.

Q. Okay. Now, also scheduled in the orderly procedure of that trail would have been such witnesses as Dan Weatherford, Phillip Arnold and other witnesses who were actually called the preceding day; isn't that correct, Mr. Goodwill?

A. Correct.

Q. And in the normal course of trial proceedings on that Wednesday there would have been at least one eyewitness and one witness—namely, Mr. Weatherford—of some critical import to your case.

A. That was not my information at that time—that they were going to be called at that time.

[357] Q. Okay. Well, those people were in fact called the next succeeding day, is that right?

A. In fact, there were several that, as I recall, were indicated that would be called, were not in fact called—that were to be called that day.

Q. Okay. But you knew also that those witnesses had not been called, at least, and were going to be called sometime.

A. Yes, sir.

Q. Okay. And, of course, it's the ultimate and absolute discretion of the State in what order to call whatever their witnesses are; is that not right?

A. Yes, sir, that's true.

Q. And you had no court order or any written report of any order which the State was going to abide by in the course of the presentation of its witnesses in the Darden case; is that right?

A. I have no guarantees, but I certainly had assurance from the State as to the order in which they were going to call witnesses. In fact, if I'm not mistaken, there were certain conferences, perhaps not during the trial, itself—between Mr. McDaniel, myself and the Court, as to try to get some idea as to what the general layout of the trial would be.

Q. Mr. Goodwill, despite all popular belief to [358] the contrary, I'm not here trying to embarrass you or personally assault you, nor am I bringing a generalized attack on the Public Defender's office of the Tenth Judicial Circuit.

I am, however, concerned with the totality of the representation of the State vs. Willie Darden and functions of the defense accordingly. And with that in mind, I must ask your indulgence to possibly ask you some compromising or embarrassing questions. But that is my purpose, only.

Namely, is it a fact that you basically had a hangover and couldn't come to court the next day; is that a fair way to categorize it?

A. No, sir, I don't believe I did.

Q. Okay. What would you say is a fair way?

A. I previously testified that I had a migraine headache, which I am prone to get. They are the type of thing that if you don't get hold of very early, they can last up to three or four days.

There is a difference between a hangover headache and a migraine headache—spots before the eyes and that sort of thing—it's fairly indicative of it.

Q. Okay. Migraine being one that will knock you down and out for a while.

[359] A. Yes, sir—

Q. But even—excuse me.

A. —fairly much. I mean, if it's not caught fairly early, yes.

Q. Okay. But even so, you were able to arrange for psychiatric appointments for Mr. Darden.

A. That's a matter of being on the telephone.

Q. Okay. And there was no way for you to arrange that prior to the trial?

A. It was arranged prior to trial.

Q. Well, there was no way for you to arrange it and carry it out prior to trial.

A. Mr Darden was to have a psychiatric examination prior to trial, and until I arrived in Inverness I was not aware that he had not received it.

Q. So until you actually started trial, you did not realize that Mr. Darden had not received a court ordered psychiatric examination.

A. That is correct.

Q. And you did not move to continue the proceedings until it was completed?

A. No, sir, I did not.

Q. But in the course of the middle of the trial, after you learned Mr. Weatherford had sandbagged you on this gun sequence, you intended then to get a continuance [360] in the middle of the trial in order to complete a court-ordered psychiatric exam.

A. No, sir. We—there had been no question that we were to have, or were going to have this at some point. The Judge discussed it with me and with the State—there would be a psychiatric exam.

Q. Are any of those discussions a matter of record?

A. I would say no, sir. I don't know if they are or not. They may be in the record.

Q. Were any of those discussions in the presence of counsel for the State, counsel for the defendant and the defendant, Willie Darden?

A. I truthfully can't recall whether they were or not.

If I may elaborate just a little bit. There was never any question, and I think the record will show that as early as the 1st of November I was extremely concerned with the psychiatric and psychological evaluation for Mr. Darden for whatever purpose that it might serve.

The delay in December caused by Mr. Darden, in essence, firing the Public Defender's office—

Q. That was December 27th; right?

A. That was December 27th.

[361] Q. Through January 9th.

A. Through January 9th. To that point, there had been no decision about it. However, prior to December 27th, he had filed a motion to waive us. After that I again got Judge Dewell to go along with it.

It was my position that even though he was an indigent defendant, that he was entitled to the same rights as a fee paying defendant and could have independent psychiatric and psychological evaluation for whatever purposes it may serve.

Judge Mars, who I believe initially took up that issue, was not convinced that he necessarily was entitled to it. However, later on they did indicate—there was some transcript I saw yesterday of a hearing, I believe, around the early part of November which indicated that he felt that it would be possible.

It was planned. I never gave up the idea of having that psychiatric examination. There were discussions between

myself and the judge, and I believe the State, that at some point this would take place. Because it was not due to any error on our part that it had not been done.

But it became apparent that the sooner—once this evidence here came in—

[362] Q. What evidence here do you mean?

A. The gun—the sequence.

Once that was coming in, the sooner we had the benefit of that psychiatric, the better off we would be.

Q. When did you actually learn the existence of that diagram—about the sequence?

A. As I told Mr. Prospect, I don't know exactly when it was. It was very early in my involvement in the case.

Q. Okay. But you went to trial not prepared or not knowing it was going to be used?

A. I went to trial prepared with the idea that it may be used. Mr. Harper, you don't file a motion to get this information out as an issue if they have not thought of it or if they were not going to use it. Why alert them to a piece of evidence which is damning by its nature?

Q. Okay. So it was not until the second day of the trial that you learned that it was going to be an issue in the case.

A. As far as I was concerned, if it came in, there was no question that would be an issue.

Q. Did you take a deposition of Dan Weatherford, pre-trial?

[363] A. No, sir.

Q. Now, this meeting with the deputies to pump them for information, so to speak, was the entire meeting at this bar in Homosassa?

A. Yes, sir.

Q. How many hours were you all there?

A. I think I indicated three or four—something like that.

Q. From approximately eight to midnight?

A. Yes.

Q. And you had four, five or six drinks?

A. That's a guess.

Q. Possibly more, possibly less?

A. Possibly more, possibly less.

Q. Do you recall what you were drinking?

A. No, sir, I don't.

Q. Do you recall they were singles or doubles?

A. I'm sure they were singles.

Q. Okay. But you were basically getting into it to be one of the boys, I believed it was categorized; is that correct?

A. Yes, sir.

Q. And this is after Mr. Darden had filed a motion to dismiss counsel alleging, in part, that Mr. [364] Johnson and yourself, in his opinion, were in collusion with the State Attorney; is that correct?

A. Yes, sir.

Q. Did you have any second thoughts that that might give some appearance of impropriety to your client, Mr. Darden, who was on trial for his life?

A. Mr. Harper, when you're involved in the defense of a case that has all of the elements of a death case, as far as I'm concerned, you do that which is expedient to do in order to try to do the best job for your client.

I did not consider whether or not my meeting with the deputy sheriffs of the Polk County Sheriff's Department in

order to find out information which they had and I did not have, would serve any purpose except to be in this man's benefit over here, and if it was looked on as improper, then that was the chance I was taking. And I assure you had we been able to obtain a not guilty verdict up there, the issue of my being with them at that time would not be raised at this time.

Q. As far as the closing argument of Mr. McDaniel was concerned and your tactical decision to allow him to continue, at what point were you going to object?

A. Probably toward the tail end.

[365] Q. What you've just testified to was, though, that the tail end was whenever you objected—whenever the objection was made. So how much longer were you planning to have, as it has been conceded, inflammatory argument to continue?

A. Well, if my recollection is correct, when Mr. Maloney did object, I leaned over and said something to the effect, "Go ahead and object."

Q. You leaned over Mr. Darden to say that; is that correct?

A. As I recall, Mr. Maloney was sitting next to me at that point.

Q. But you were allowing, in a death case, prejudicial and inflammatory argument to go to a death qualified jury without making an objection, deliberately; is that what you said.?

A. I'm saying that perhaps I let in improper argument. It is questionable still in my mind as to just how inflammatory it may have been.

Q. You had some doubts as it being inflammatory?

A. Mr. McDaniel bothers to avoid the issues. If you weren't there and you didn't see it, it was almost an indictment of the jury, itself, which I referred to a number of times in my closing argument.

The pounding of the rail, the pounding of the [366] jury rail—I think my final argument indicates that it's hard to tell from Mr. McDaniel's argument who's on trial here, Mr. Darden or the jury, because that was the nature of the argument, itself.

Q. What about the part where Mr. McDaniel categorized Mr. Darden as an animal and an admitted prisoner who had a gun in his possession—did you consider that inflammatory or prejudicial?

A. There was testimony to the effect that he had a gun.

Q. Did you consider that part about him being a prisoner and an animal prejudicial?

A. There was testimony that he was a prisoner; there was testimony that he had a gun.

Q. What about the part about him being an animal though?

A. The animal thing got blown somewhat out of proportion because of the comment Mr. Maloney made, which I'm sure he would have liked to have not said.

The issue was, in final argument, that this was not the man that committed the crime. The man that did commit the crime was, indeed, an animal, but this was not the man that did it. And unfortunately, Mr. Maloney mentioned that phrase which was jumped upon by Mr. McDaniel—in his closing argument.

[367] Q. What about the part where Mr. McDaniel wished it was Mr. Darden's face that had got blown in; you think that that was inflammatory or prejudicial?

A. Possibly. I believe that courts have held that in heinous crimes where the testimony indicates a heinous situation, that a fair comment.

Q. What would be a fair comment about blowing the defendant's face away, Mr. Goodwill?

A. I didn't derive the standards.

Q. No, but apparently you're trying to defend the justice of them.

A. Well, Mr. Harper, if you want to get to the point of the closing argument, it's very interesting that the reason we are in the courtroom today and the reason that Judge Hodges—my understanding is—stayed the execution in this case, is because there was no objection to that final argument and it was allowed to stand.

Now, you're attempting to come back into this court and say that because of a tactial move on our part which allowed that argument to stand, which has saved this man's life to this point—that we were in error.

Q. Well, there's some dispute as to whether it was a tactical decisions or attorney's misfeasance.

[368] A. I will—

Q. Let me finish my question. And that's part of what we're here to determine. But rather than get into an argument with you, I would like to ask you a few more questions.

A. All right, sir.

Q. Did you believe that any of the arguments by Mr. McDaniel were in the nature of personal opinion as to credibility or weight of either evidence or witnesses?

A. He discussed very little about evidence. What was the first part about?

Q. Did you think that any of the closing argument by Mr. McDaniel was in the nature of being a personal comment on his part on either the weight of the evidence or the credibility of witnesses?

A. Mr. McDaniel's final argument did not get into the issues of weight of evidence or credibility of witnesses. He didn't talk about the issues. I was somewhat satisfied from the standpoint that he was not talking about the issues, because

that was my intention on my closing issue—to talk about the issues, the lack of evidence, the credibility of witnesses.

Q. Did you believe that either or any of Mr. McDaniel's statements in closing argument were in the nature of calculated attempt to inflame the passions [369] of the jury?

A. Calculated attempts?

Q. Let me rephrase the question.

Do you believe that any of Mr. McDaniel's statements in closing argument amounted to attempt to inflame the passions of the jury?

A. Perhaps.

Q. And what points of argument do you think amounted to attempts to inflame the passions of the jury?

A. The avoidance of talking about the issues.

Q. And talking about something else apparently—and what was that?

A. The improper portion of that argument, to my way of thinking, was the comment regarding the Division of Corrections.

Q. And as a tactial decision you declined to make objections to that?

A. That's correct. And at the time the objection was made, the trial court had the opportunity at that point in time to correct the error, if there was, in fact, error.

Q. Do you know how much argument continued after the objection was made by Mr. Maloney?

A. Basically, none.

[370] Q. In fact, just a couple of more minutes and it was all over; is that right?

A. (No audible response)

Q. I need you to answer for the record.

A. Yes.

MR. HARPER: That's all we have at this time, Your Honor.

REDIRECT EXAMINATION

BY MR. PROSPECT:

Q. May it please the Court. As I understand, Mr. Goodwill, it was your intention at all times, notwithstanding that Mr. Darden had been examined by county officials or state officials, to seek an additional psychiatric examination by private individuals?

A. Yes, sir.

Q. What was going to be the purpose of securing such an examination?

A. Perhaps twofold, depending on the results, it's possible that they could have been used in defense.

Q. As an insanity defense?

A. He had already been found incompetent—

Q. Excuse me—did you say incompetent?

A. Excuse me. He had already been found competent and to have this psychiatrist come back with a finding of incompetency, certainly it would have raised [371] an issue at that point in time.

But I'm thinking more from a standpoint that if his examination revealed, for example, a personality who could not have committed this type of crime. If I could have received this type of statement from the psychiatrist; based on my examination of this man he is not one who could have committed this serious type of crime, that might have been something we could have used in defense.

That might have been worthwhile as far as any final argument or any other consideration, although it would certainly

have opened up some problem areas as far as cross examination of the psychiatrist, which is always a problem.

Second thing is that we may have been able to use his report on the sentencing portion in the event we got a verdict against us.

Q. How long did you spend preparing for the penalty phase of the trial?

A. Penalty phase—it had been indicated to us the day before by Judge Dewell that immediately upon the rendering of a verdict in the event it went against the defendant, that we would move into the sentencing phase post haste.

I had done some work on it that night or that evening, what I could, as far as sentencing phase is concerned. We had been—the psychiatric report was devastating.

Q. Well, before you get to that, had you spoken with Mr. Darden about the possibility of receiving an adverse verdict?

A. Yes, sir.

Q. And in light of that possibility, what may or may not have been able to have been able to be presented in sentencing?

A. As I recall, we did, and at that time we went through basically the statutes in existence at the time regarding mitigating and aggravating circumstances—what things would be available to us and at this point in time we were fairly limited statutorily by what things were in the statutes as far as mitigation, although it had been indicated to me by Judge Dewell that he would not necessarily hold us to those things if we had something which was relevant.

Q. Did you spend at least ten or fifteen minutes in preparation for penalty phase?

A. Oh, yes, sir.

Q. More?

A. Yes, sir. After the trial I—as far as penalty phase was concerned, it's been alleged that there was a ten minute recess. I think it was more like thirty-five or forty minute recess. The time I spent in that period of time was to interview Ms. Turman, who I had some occasion both by taking her deposition and I recall some conversation with her in passing, that she would not press for the death penalty.

I asked Judge Dewell if he would allow me to interview her during that period—during that recess—to see what her feelings were.

He, of course, was very concerned that I did not get the woman in there and browbeat her as far as this was concerned.

As I recall, he asked someone—one of the court officials or someone—to be present in the room and, as I recall, I spent twenty or twenty-five minutes talking with Ms. Turman to see if I could not convince her to go in and ask for the jury not to give him the death penalty, or at least not press for the death penalty.

Q. In other words, present her as a witness on behalf of Mr. Darden.

A. Yes, sir.

Q. The wife of the victim.

A. Yes, sir.

Q. How did that turn out, by the way—the [374] interview?

A. She was fairly noncommital. As I recall, her response was to the effect that she would not ask the jury not to put him to death, but that if he was the one that had committed the crime, that he should pay in accordance with the law.

Q. Did you receive—

A. But she was not adamant about it, but it was not a good position from my standpoint as far as sentencing was concerned.

Q. Did you receive a psychiatric report from the people in Tampa?

A. Yes, sir.

Q. Why didn't you use it in mitigation?

A. Do you want—

Q. I want the reason why you didn't use it.

A. You want me to tell you what it said?

Q. If that is part of the reason why you didn't use it, yes, sir.

A. I failed to ask at the beginning of this whether or not there has been any confidentiality waiver in this matter, and I think at this point that I would like to request the Court to tell me whether or not there has been a waiver of attorney-client privilege.

THE COURT: In those matters material to the [375] issues before the Court, Petitioner has waived the attorney-client privilege. His privilege to assert—he is not asserting in answer to that question. You may answer the question.

THE WITNESS: Thank you.

A. (Continuing) It was indicated to me by the psychiatrist that, based on his examination of Mr. Darden, that he very well could have committed the crime; that he was, as I recall his term, sociopathic type personality; that he would act entirely on impulse with no premeditation from the standpoint of planning. But that when a situation arose, the decision would be made simultaneously to commit the act.

I—based on that report, there was no way I could put that psychiatrist on the stand to testify about a crime which appeared to be very impulsive.

Q. Mr. Goodwill, do you know of any search and seizure involving the petitioner, Mr. Darden, that was conducted by the authorities, at any time?

A. That of the automobile.

Q. Was anything seized as a result of the search, used against him at trial?

A. No, sir.

Q. Do you recall that part of the trial—I believe at the beginning of a given day's proceedings—[376] the Court made the remark along the lines that, "I believe the defendant has another multitude of motions to file today." Did you consider that statement objectionable?

A. No, sir.

Q. Do you know of any legal grounds that would have given you a valid good faith basis, or even a bad faith basis, to object or make requests for sanctions or mistrial or what have you?

A. As I recall, that was made at the bench. The venire was some distance away—I doubt if the venire even heard the comments. The practical matter was that Mr. Darden did usually have a multitude of motions to file at any hearing.

Q. Do you recall moving to strike the venire?

A. At which point?

Q. At any point.

A. Yes, sir, I believe I moved to strike the venire on two occasions.

Q. Did you do so in writing?

A. No, sir.

Q. Any reason why you failed to submit your motion in writing?

A. I believe I indicated to Judge Deweli, prior to the time that we came into the courtroom, that I [377] was going to file a motion to strike the venire. He indicated to me that I could go ahead and file it, but that he was going to deny it.

Q. You knew he was going to deny it before you filed it?

A. Yes, sir. And I renewed the motion in the courtroom. I believe his comment was, "Oh, I previously told you that I was going to deny this motion, and it is denied.

Q. All right, sir. Do you recall the direct examination of Ms. Turman when she got to the point in her testimony where she testified—I believe that after Mr. Darden has shot her husband between the eyes—he turned to her and told her to take out her teeth and suck his penis. Do you recall that part?

A. Yes, sir.

Q. Did you consider that objectionable testimony?

A. Legally or personally?

Q. Legally.

A. No, sir.

Q. Why not?

A. My feeling, it was res gestae.

Q. Was her testimony in that respect—was it a narrative form of what transpired from point one to the end of the time, as far as she was concerned?

[378] A. As I recall, it was.

As I recall this testimony occurred in between her husband's being shot and the shooting of Phillip Arnold, and that was narrative in that venire.

Q. Did you object to the admission of the firearm into evidence?

A. Yes, sir.

Q. Would you care to reconsider that answer?

A. It's my recollection at the time that—I believe the firearm was introduced by Mr. Weatherford for introduction into

evidence, and I do not believe the FBI agent—that there was an attempt to introduce the firearm at that point.

I may be mistaken. As I indicated to Mr. Harper, I did not examine the record and I don't recall the sequence. But I don't believe the firearm was actually introduced into evidence until Mr. Weatherford testified and tied the firearm to the crime by the sequence, the cylinder sequence.

Q. And you did object to that?

A. Yes, sir, strenuously.

Q. Do you happen to know who owned the automobile in which Mr. Darden was riding that day—or driving?

A. Mr. Darden told me that Macie Wright, his girlfriend in Tampa, owned it.

[379] Q. Do you recall a point in the trial when Mr. Maloney referred to the indictment as an information?

A. No, sir, I don't.

Q. If I told you that he did, would you consider that some grounds of mistrial or error or improper remarks or something?

A. I may have done—no, it's a slip of the tongue.

Q. Are you familiar with the motion to dismiss the indictment that was filed by the office of the Public Defender on October 9th, 1973?

A. Is that the Furman motion?

Q. I'm showing the witness Volume I, Page 35 through 40 of the record on appeal.

A. Yes, sir, I'm familiar with the fact that it was filed.

Q. Did you have any input into this motion?

A. Did I?

Q. Yes, sir.

A. No, sir, I did not.

Q. Do you know who did?

A. Mr. Johnson. I—I take that back. As I recall, that motion was a result or came about as a result of a conference of the Public Defenders of the State of Florida, held sometime previous to this, in which this [380] particular argument and type of motion was discussed at some length and prepared through a cooperative effort of the Public Defenders of the State of Florida.

MR. PROSPECT: Thank you, Mr. Goodwill. I have nothing further, Your Honor.

MR. HARPER: May it please Your Honor—

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. HARPER:

Q. As I remember, during the penalty phase, Mr. Goodwill, you were preoccupied with Ms. Turman in preparing or deciding whether or not to use her testimony during your penalty phase.

A. Yes, sir.

Q. What was Mr. Maloney doing at that time?

A. I don't recall.

Q. Who actually excused the witnesses—defense witnesses?

A. What do you mean?

Q. Who actually told them to go home?

A. The ones that—

Q. The defense witnesses.

A. The ones that were in the hall?

Q. Yes, and in the witness room or wherever else they were.

[381] A. I don't recall. It may have been a bailiff.

Q. At your instructions?

A. It was at our instruction, yes.

MR. HARPER: That's all I have, Your Honor.

THE COURT: Any reason why this witness should not be excused from his subpoena?

MR. HARPER: No objection, Your Honor.

MR. PROSPECT: No reason, Your Honor.

THE COURT: All right, sir. You are excused. (Witness retires from stand)

MR. PROSPECT: Respondent has nothing further, Your Honor.

THE COURT: All right. Mr. Harper?

MR. HARPER: No rebuttal.

THE COURT: For the record and at this hearing, stipulate in the provisions that the entire record on appeal would be an exhibit in this case; is that correct, counsel?

MR. PROSPECT: Yes, Your Honor.

MR. HARPER: The higher trial file, as I understood.

THE COURT: And the record on appeal, also?

MR. HARPER: I'm sure that would be a part of it, yes, sir.

THE COURT: All right. It will be considered.

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